IN THE

Supreme Court of the United States

October Term, 1970

~~No. 1331~~ 70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, ET AL.,

Petitioners,

v.

UNITED STATES, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION OF UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATIONS AND UTE DISTRIBUTION CORPORATION, A UTAH CORPORATION, FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE

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Ute Indian Tribe of the Uintah and Ouray Reservation and Ute Distribution hereby respectfully move for leave to file the attached brief amici curiae in this case. The consent of all attorneys for the respondents has been obtained. The consent of the attorney for petitioner was requested and obtained for the Ute Distribution Corporation but denied to counsel for the Ute Indian Tribe.

The interest of the Ute Indian Tribe in this case arises from the fact that said tribe has a majority interest in the net proceeds from all the minerals which are the subject matter of the case of *Affiliated Ute Citizens of the State of Utah* v. *United States,* and is the owner of 577 shares of the common stock of the Ute Distribution Corporation, which corporation said suit seeks to denude of its powers and assets.

The interest of the Ute Distribution in this case arises from the fact that *Affilated Ute Citizens of the State of Utah* v. *United States* seeks to strip said corporation of its powers and assets and seeks to adjudicate rights of mixed-blood Ute Indians who have not disposed of their shares in said corporation and whose interests are adverse to the mixed-blood Ute Indians who have sold their stock in said corporation. The Ute Distribution Corporation is further interested in that said suit endeavors to reactivate the Affiliated Ute Citzens of the State of Utah although said organization has fully completed the purposes for which it was organized in relation to all assets of the mixed blood members of the Ute Indian Tribe and has lawfully and irrevocably delegated to the Ute Distribution Corporation the managerial powers and control over all gas, oil and mineral rights of every kind and all other assets not susceptible to equitable or practicable distribution, as defined and determined by the Act of August 27, 1954 (68 Stat. 868).

In the case of *Reyos, et al.* v. *First Security Bank,* (*et al.,* petitioner seeks constructions of the Act of August 27, 1954, *supra,* that are vital to the interests of both the Ute Indian Tribe and the Ute Distribution Corporation, but are only incidentally involved in the liabilty asserted against the defendants in said action in the court below. It is, therefore, believed that the facts as above stated, and the questions of law resulting therefrom, will not be adequately presented by the parties.

Said facts and questions of law are relevant to the disposition of the case in that the Affiliated Ute Citizens of the State of Utah, an unincorporated association, no longer has capacity to institute suit and particularly on behalf of that portion of the 490 mixed-blood Ute Indians who have not disposed of their stock in the Ute Distribution Corporation and whose interests are contrary to the interests of those who have sold their stock in said corporation; and that said facts establish that the complaint fails to state a claim upon which relief can be granted; and that the Ute Indian Tribe and the Ute Distribution Corporation where indispensable parties to the action and were not properly joined; and that in the case of *Reyos, et al. v. First Security Bank, et al.* proper disposition may be made by the court without doing violence to the rights of the Ute Indian Tribe and the Ute Distribution Corporation.

It's further believed that the brief submitted herewith, for which permission to file is requested, will contain a

more complete argument in relation to the matters of primary concern to said tribe and corporation.

Dated this 27th day of August, 1971.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, JOHN S. BOYDEN, a member of the Bar of this Court, hereby certify that on the 27th day of August, 1971 I mailed a copy of the foregoing Motion of the Ute Indian Tribe of the Uintah and Ouray Reservation and Ute Distribution corporation, a Utah Corporation, For Leave to File Brief Amici Curiae to the Solicitor General of the United States, Department of Justice, Washington, D. C. 20530, air mail, postage prepaid, and a copy to each of the following attorneys first class mail, postage prepaid:

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I

INTEREST OF AMICI CURIAE

A. INTEREST OF UTE INDIAN TRIBE OF UINTAH OURAY RESERVATION.

The Ute Indian Tribe of the Uintah and Ouray Reservation, Utah (nereinafter referred to as "Ute Tribe"), is an Indian Tribe organized under and by virtue of the Act of June 18, 1934 (48 Stat. 984), as amended, whose members are defined in the Act of August 27, 1954 (68 stat. 868) as

being "full blood," together with such other members who have been duly placed upon the rolls of said tribe pursuant to said act as amended by the Act of August 2, 1956 (70 Stat. 936), and the constitution and bylaws of the tribe, and ordinances enacted thereunder.

The interest of the Ute Tribe in this case arises from the fact that said tribe is entitled to 72.83814% of the net proceeds from all of the gas, oil and mineral rights of every kind and all other assets not susceptible to equitable and practicable distribution as defined in the Act of August 27, 1954, *supra*, title to said minerals being in the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation subject to the provisions of said act. The case of *Affiliated Ute Citizens of the State of Utah* v. *United States* (hereinafter referred to as the "AUC Case") seeks an order of the court distributing an undivided 27.1686% of the mineral estate underlying the Uintah and Ouray Reservation to the terminated individual mixed blood members, pro rata. (Pet. App. 539). Since the mixed blood proportionate interest in the assets of the reservation was 27.16186%, it is assumed that the figures contained in the complaint and proposed amended complaint (Pet. App. 567) differ because of typographical errors. In petitioner's motion for a rehearing before the United States District Court for the District of Utah, Central Division, petitioner sought the joint management with the Ute Tribe to be restored to an organization with the arrogated title of Affiliated Ute Citizens of the State of Utah (hereinafter referred to as "AUC"), notwithstanding the fact that the mixed-blood members of the tribe through the AUC had irrevocably delegated such authority to the Ute Distribution Corporation, a Utah corporation (hereinafter referred

to as "UDC"). Such a change of management is of vital concern to the Ute Tribe since the tribe has purchased through the years 577 shares of common stock of UDC and resents being robbed of its voice as a shareholder in UDC. Should the prayer of petitioner's complaint be granted, the heirship problem thus created would dwarf the Indian allotment heirship problems which have plagued not only the Ute Tribe, but other tribes and the United States for so many years. Further, a transfer of management would cast a cloud upon the many mineral, gas and oil leases now in operation and effect upon the reservation. The income from these leases constitutes a major portion of the income of the tribe and UDC. The UDC was established, pursuant to federal and state law as hereinafter described, for the purpose of receiving such income. AUC's frontal attack on the legality of the UDC organization and disruption of present management is made in an action to which the UDC and Ute Indian Tribe are not parties. Tribal immunity from suit may well prevent the tribe from being joined as a party.

B. INTEREST OF THE UTE DISTRIBUTION CORPORATION, A UTAH CORPORATION.

The UDC is a Utah corporation organized by the mixed-blood or terminated Ute Indians at meetings properly called for that purpose. The corporation was specifically authorized by the Act of August 27, 1954, *supra*, Section 13(3).

The interest of UDC in this case arises from the fact that the purported organization of AUC seeks to strip UDC of its powers and assets and seeks to adjudicate rights of mixed-blood Ute Indians who have not disposed of their

shares in said corporation and whose interests are adverse to the mixed-blood Ute Indians who have sold their stock in said corporation. UDC is further interested in that petitioner in said *AUC Case* endeavors to reactivate the AUC although said organization has fully completed the purposes for which it was organized relating to all assets of the mixed-blood members of the Ute Tribe and has fully, lawfully and irrevocably delegated to UDC the managerial powers and control over all gas, oil and mineral rights of any kind, and all other assets not susceptible to equitable and practicable distribution as defined and determined by the Act of August 27, 1954, *supra*.

C. COMMON INTEREST OF THE UTE INDIAN TRIBE AND THE UTE DISTRIBUTION CORPORATION.

Both amici curiae are interested to see that proper disposition is made of *Reyos, et al.* v. *First Security Bank, et al.* (hereinafter referred to as "Reyos") without doing violence to the rights of the Ute Tribe and UDC.

Negligence of the United States cannot be inferred from its approval of the creation of UDC as authorized by law; and there is no necessity to consider whether mixed-blood members ceased to be members of the Ute Tribe upon termination since the matter of offering to sell stock to the terminated mixed-blood members of the tribe is provided in the Articles of Incorporation of UDC.

II

ARGUMENT

A. THE COMPLAINT IN *AFFILIATED UTE CITIZENS OF UTAH V. UNITED STATES* FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The Act of August 27, 1954, *supra*, provided in Section 13(3):

> When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity *for any purpose*, the Secretary is authorized to make such transfer. (Emphasis added). (App. of Pet. Stat. & Reg., Pet. Br. p. xi).

Said act further provided in Section 10 thereof:

> All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.
>
> (App. of Pet. Stat & Reg., Pet. Br. p. vii).

It will be noted that the mineral rights were not to be distributed, but were to be managed by both groups jointly, *subject to such supervision by the Secretary as is otherwise required by law,* and only the net proceeds distributed. The title to such minerals, therefore, remained in the United States in trust for the Ute Tribe, but subject to management and distribution of proceeds as provided by the act.

The Plan for Distribution of the Assets of the Individual Mixed-Blood Members was prepared and ratified by a majority of that group and submitted to, and approved by, the Secretary of the Interior. The Plan with reference to the intended formation of the UDC was clear and unequivocal. Pages 140 and 141 of petitioners' Appendix — Exhibits bearing on this crucial issue are illegible on the copies made available to the Ute Tribe and the UDC. Since this portion of the plan is so determinative of the true facts and because we desire to insure the availability of Section VII to this court, we have reproduced the complete section in the appendix to this brief. (App. i). We here quote a pertinent portion from Section VII:

> It is proposed that a corporation be formed under the laws of the State of Utah to receive all income belonging to the mixed-blood group from the theretofore unadjudicated or unliquidated claims against the United States, all income from oil, gas and mineral rights of every kind and from all other assets not susceptible to equitable or practicable distribution . . . . Each person included upon the final mixed-blood roll as provided in Section 8 of the Act will be issued ten shares of stock in said corporation. The stock of the corporation will be subject to transfer, devise or descent. Officers of the corporation will be delegated authority from the stockholders for participation in the joint management of such assets from which the corporate in-

come is derived, with the Tribal Business Committee of the full-blood group. The powers of the corporation shall be limited to distribution of said assets and the powers necessarily incident thereto.

Delegation of management powers by the original stockholders will provide a means of restricting the management to the interested parties. Thus, if a mixed-blood member disposes of his stock he will no longer have a voice in naming the mixed-blood delegates to act with the Business Committee of the full-blood Indians. Conversely, transferees, legatees and heirs will acquire a voice in such management as their interests are acquired.

(App. i, ii).

The then proposed Constitution and Bylaws of the AUC, attached to and made a part of the plan so submitted, empowered the officers of the proposed organization to:

irrevocably delegate to corporations or the officers thereof, organized pursuant to and in accordance with Public Law 671, 83rd Congress, 2d session (68 Stat. 868), to receive, manage, distribute or otherwise handle assests of the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, such powers and authority as may be necessary or desirable in the accomplishment of the objects and purposes for which said corporation may be so organized.

(Art. V. §1 (b), Pet. App. — Ex. p. 155).

The officers of the AUC, in accordance with their authority, did irrevocably delegate to the UDC all their powers relative to the subject matter of this suit, and at general meetings of AUC authorized certain of their members to incorporate the UDC with a preamble to its Articles reciting:

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as determined by Public Law 671 — 83rd Congress, approved August 27, 1954, 68 Stat. 868, acting pursuant to the provisions of said Public Law 671, as amended, and in accordance with the Plan for Distribution of the Assets of the Individual Mixed-Blood members of said Tribe, as adopted by said mixed-blood members and approved by the Secretary of the Interior, and pursuant to a resolution adopted by said mixed-blood members, and being desirous of organizing a corporation under the laws of the State of Utah on behalf of said mixed-blood members for the purpose of managing jointly with the Tribal Business Committee of the full-blood group of said Indian Tribe, as provided in said Public Law 671, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practical distribution between said mixed-blood and full-blood groups and the members thereof, and for the purpose of distributing the net proceeds therefrom, do agree and hereby certify as follows:

(Pet. App. — Ex. pp. 2, 3).

The purpose of UDC was again explicitly stated in Article IV of the Articles of Incorporation:

> The pursuit or business which it is agreed shall be carried on by this corporation shall be to manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, pursuant to said Public Law 671, as amended, the aforesaid Plan for Distribution, all unadudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of

> the said tribe, as defined and determined by said Public Law 671, are now, or may hereafter become entitled pursuant to said Public Law 671 or the laws of the United States and to receive the proceeds therefrom and to distribute the same to the stockholders of this corporation as herein provided.
>
> The powers of this corporation shall be limited to the joint management of such claims and assets and to the receipt and distribution of the income or proceeds therefrom together with such other powers as may necessarily be incident thereto. For the purpose of carrying any of its pursuits, business and powers, this corporation may contract with other individuals, organizations, corporations or entities.
>
> (Pet. App. Ex. pp. 3, 4).

The subscribers of the stock of UDC, consisting of all 490 mixed-blood members whose names appeared on the final roll, each received 10 shares of the common stock of the corporation. Article VI of the Articles of Incorporation of UDC provides:

> The stockholders in exchange for their stock delegate to the corporation and the officers thereof, *without further act or deed,* authority to manage jointly with the Tribal Business Committee of the full-blood group of said Ute Indian Tribe all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution under said Public Law 671, in which said mixed-blood members have any interest, and to receive the proceeds therefrom and to distribute the same, less any necessary or incidental expense, to the stockholders hereof.
>
> (Emphasis added). (Pet. App. — Ex. pp. 4, 5).

Petitioner complains that UDC was not formed pursuant to a "constitution and bylaws" nor was it "ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary." (App. Br. 7).

The meeting adopting the Articles of Incorporation of UDC was a special meeting of AUC. (Pet. App. — Ex. 18). The authority of the AUC organization to act is not questioned by petitioners. The petitioners in AUC base their standing or authority to bring the AUC suit upon the Constitution and Bylaws of AUC. (Pet. App. — Ex. 151-162). The bylaws of that organization provided for special meetings of the general membership. (Art. III, §2, Pet. App. — Ex. 10). Article III, Section 4 of the same bylaws defines a quorum as follows:

> A quorum of a general membership meeting shall consist of not less than thirty voters at the annual meeting and twenty-five voters at a special meeting. A quorum of the Board of Directors shall consist of three members of the Board of Directors.
>
> (Pet. App. — Ex. 11).

Forty-two mixed bloods at the meeting voted for the resolution accepting the UDC Articles of Incorporation, with only 5 voting against. There is no indication as to whether others were present and not voting. The voting members numbered nearly twice the requirement for a quorum at a special meeting, and the majority in favor was over 8 to 1. This was the action of the AUC organization, which organization petitioners contend was "[a]n approved organization that had been effected prior to that date [the date of the adoption of the resolution]." (Pet. Br. 7, Note (9)).

No derogatory inference can be made from petitioner's statement, "UDC was formed by 5 incorporators" (App. Br. p. 7). The laws of the State of Utah at that time provided, "The number of incorporators shall be not less than five." (App. iii).

Even if this state of facts did not exist, every member accepted the benefits of the stock and the complaining members sold stock for a consideration, adequate or otherwise, knowing from the public record that in exchange for their stock they had delegated to the UDC authority to manage and distribute the proceeds from the mineral estate.

The stock of the corporation was subject to transfer and the consequences of sale were made a part of that same public record when the Articles were filed with the Secretary of State of the State of Utah. The last paragraph of Article VI of the Articles of Incorporation of the UDC states:

> The stock of the corporation is subject to transfer, devise or descent. If a mixed-blood member of said tribe, or any stockholder herein disposes of his stock, he will no longer have a vote or any control in the affairs of the corporation, or be entitled to share in the distribution of the proceeds as hereinbefore provided, unless and until he thereafter again becomes a stockholder in the corporation. Transferees, legatees, and heirs of any stock in the corporation shall acquire all rights to which a stockholder is entitled, including voting rights and the right to share in the distribution of the income or proceeds available for such distribution.
>
> (Pet. App. — Ex. p. 5).

A rump revival of an association that has thus divested itself of all title and authority regarding the proceeds from the minerals of the reservation neither obligates those mixed-bloods who have retained their stock in UDC to attend such meeting nor requires mixed-blood UDC stockholders to join the filing of a suit by those who have supped at the table of UDC and now seek to have the cake they have already eaten.

Equity does not require that present mixed-blood holders of UDC stock cause the revenues they are now receiving to be subject to contingent attorneys fees, nor have their interest jeopardized by the clouding of present tribal and UDC leases from which their dividends now emanate. Complicated heirship problems avoided by the ready transfer, descent or bequeathing of shares and joint management by a business corporation under state law are choices that were deliberately made by the mixed-bloods themselves as herein before outlined.

The statement that "BIA caused UDC to be formed" (Pet. Br. 7), is erroneous under this state of facts. To say that AUC "was ignored, although AUC never purported to delegate its powers to act as authorized representative" (Pet. Br. 7), simply ignores the obvious.

The presumptuous use of the name, Affiliated Ute Citizens of the State of Utah, in a suit the subject matter of which said organization no longer has an interest is not the suit of 490 original mixed-blood Indians. Counsel for petitioners cannot legimately contend that he now represents the AUC as authorized by the Act of August 27, 1954 and as approved by the Secretary of the Interior under Section 6 thereof. The mixed-bloods who have retained

their stock have a right to speak for themselves and the *officers* of UDC, who still consist exclusively of mixed-bloods, have instructed their authorized legal counsel to file this brief.

The Ute Tribe that has become the owner of 577 shares in UDC through purchase under the provisions of the termination act has likewise instructed its legal counsel, who has served them for some 25 years, to bring to the attention of this honorable court this sequence of events set out in the documents now before the court. Petitioners fail to distinguish the right to net proceeds derived from the minerals underlying the reservation from the minerals *per se*. If the mixed-bloods had not delegated to UDC authority to manage and to distribute the net proceeds, their interest would still be in the management and in the proceeds. There is no statutory authorization for conveyance of the minerals now held in trust by the United States for the Ute Indian Tribe.

The ACU complaint, as filed, or as proposed by amendment, fails to state a claim upon which relief can be granted, viz:

(a) The Act of August 27, 1954, *supra*, must be construed as a whole and the relief sought in the *AUC Case* is contrary to express provisions of the statute.

(b) The UDC is the authorized representative to manage and distribute the mixed-blood interest in the net proceeds from the reservation minerals.

B. THE COURT LACKS JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION IN THE AUC CASE.

While it is believed that the United States as defendant in the *AUC Case* will respond to the dispositive jurisdictional question as above stated and now before the court, the Ute Tribe and UDC, in order to insure an adequate response, desire to briefly state their position. The jurisdiction of the Federal District Court over the subject matter of the *AUC Case* was alleged by petitioner in the trial court and Court of Appeals to have had basis in 25 U.S.C. 345, 28 U.S.C. 1399, and 28 U.S.C. 2409. Apparently petitioner has abandoned its contention that 28 US.C. 1399 and 28 U.S.C. 2409 confer jurisdiction on the court since said statutes are not mentioned in petitioner's brief and were sumarily held inapplicable by the trial court and the Court of Appeals on the ground that said statutes require an ownership wherein in the United States is a joint tenant or tenant in common with the party seeking relief.

If jurisdiction is to exist, it must be found within the provisions of 25 U.S.C. 345. While the Ute Tribe and UDC recognize the broad principles of statutory construction in favor of Indians as enunciated in *Choate v. Trapp*, 224 U.S. 665 (1912), and its progeny, there is no justification for construing the word "allotment" beyond the precise meaning carefully laid down by over a century of congressional enactments and case law. See United States Department of Interior, *Federal Indian Law* (1958), Schap. IX-C, pp. 773-818. The word "allotment" has become a word of art with specfic meaning in relation to Indians. Further, the liberal construction of statutes involving Indians cited by petitioner cannot be applied by one group of terminated

Indians against two other groups of Indians — terminated mixed-bloods and an organized tribe. The interest of the entire membership of the Ute Tribe and mixed-blood stockholders in UDC cannot be subordinated to the interests of a select group of mixed-bloods who now desire to wrest control from UDC. There are no cases favoring one group of Indians against another. *McKay* v. *Klayton*, 204 U.S. 456, 459 (1907), is of no assistance in this case since it involved a tract of land in the Umatilla Reservation which had been duly allotted to a member of the tribe in 1899. The decision of the court below is correct in finding that the ownership to individual Indian allotments is not at stake in this case and the decision of *Naganab v. Hitchcock*, 202 U.S. 473 (1906), is controlling.

Petitioner's selected wording from §345 "excluded from . . . . any parcel of land to which they claim to be lawfully entitled" purportedly provides a catch-all consent to jurisdiction "not along the formalistic lines of whether a particular grant is denominated an allotment." (Pet. Br. 41). Petitioner uses as authority *United States* v. *Pierce*, 235 F.2d 885 (9th Cir. 1956). Additionally, *Scholder v. United States*, 428 F.2d 1123 (2nd Cir. 1970), *cert. den.* 400 U.S. 942 (1970), is used as authority for broad usage of the jurisdictional statute to matters "merely collateral to an Indian allotment." A careful reading of the *Schloder Case* reveals that the jurisdiction in both the *Scholder* and *Pierces Cases* is based upon the denial of a right acquired appurtenant to an "allotment" in the "formalistic" and traditional sense. The plaintiff in the *Scholder Case*, in addition to his claim concerning a pro rata cost incurred in building an irrigation lateral on his Indian allotment, asked the court to consider claims against the United States and

the Department of Interior, challenging the expenditure of funds for the Indian irrigation system, claiming an unconstitutional taking, conversion, abuse of discretion, breach of fiduciary duty, and a payment not authorized by Congress. With regard to these claims, the court said:

> These appellants are not claiming denial of a right acquired appurtenant to their allotment. They are challenging the Bureau's administration of an Indian irrigation system. We cannot fairly say that one's right to an allotment includes as an incident of that right a guarantee of judicious administration of an irrigation project. The consent given in section 345 does not encompass appellants' challenge to the expenditure, and the district court properly dismissed the individual appellants' first set of claims against the United States.
>
> (*Scholder, supra* at pp. 1126, 1127).

In United States v. Preston, 352 F.2d 352, 357 (9th Cir. 1965), the court volunteered the following concerning §345:

> We think it is equally plain that the Indian allottee is not authorized by Section 345 to sue the United States for the purpose of claiming or establishing any assignment or distribution of water rights, rights which he automatically acquired as result of the creation of the reservation . . . .

The nature of the interest sought to be protected by petitioner in this action does not fall within the purview of 25 U.S.C. 345, and the court is without jurisdiction of this action.

C. IN *REYOS, ET. AL. V. UNITED STATES, ET. AL.* THE PETITIONER SEEKS IMPROPER STATUTORY CONSTRUCTION AFFECTING THE VITAL INTERESTS OF BOTH THE UTE TRIBE AND UDC.

The argument of petitioners in *Reyos,* with reference to the alleged neglect of the United States, assumes that Congress directed that the minerals "be not partioned [sic] to Corporations." (Pet. Br. 36). Whether petitioners meant portioned or partitioned, the interests of the Tribe and of UDC require a more accurate consideration. Congress authorized the transfer of a portion of the assets of the mixed-bloods to a corporation or other legal entity for any purpose, when in the opinion of the mixed group it was to their best interest. [68 Stat. 868, 875, Sec. 13(3)]. The proceeds from the minerals are certainly assets, and the B.I.A. did not circumvent the statute when it approved the action of the mixed-bloods in forming UDC as authorized by the termination act. We deem it unnecessary to repeat the procedures which legally vested in UDC the right to manage, with the Ute Tribe, the mineral estate of the reservation. Neither the Ute Tribe nor the UDC desires to detract from whatever protection petitioners are entitled to by reason of being terminated, mixed-blood Indians, but when they demand preferential treatment as "the Indians" in direct opposition to the legal rights of their Indian brothers, we find no case supporting such a theory. The Court of Appeals reversed no historic policy as contended by petitioner (Pet. Br. 37) when it construed the termination statute to authorize the powers and functions of UDC.

At pages 48-50 of their brief, petitioners now seek to have this court review the case of *Ute Indian Tribe* v. *Probst* [428 F.2d 491 (10th Cir. 1970), *cert. den* 400 U.S. 926 (1970)]. The Ute Tribe deems it inappropriate to again present its position in relation to the statutory requirement of "offer to members of the tribe" which is now a moot question. Its argument is set out in the Brief of Respondent, Ute Indian Tribe of the Uintah and Ouray Reservation, in opposition to the petitioners for a writ in said case, Supreme Court Docket No. 638, 637. The adequacy of the record is apparent from the argument of counsel in that case.

UDC asserts that the *Probst Case* is inapplicable since that case involved the surface rights of real estate and required the court to determine whether mixed-blood members ceased to be members of the Ute Tribe when the final rolls were published in the Federal Register, 68 Stat. 868, Sec. 5. In the case at bar, the Articles of Incorporation of UDC require the offer to be made to the mixed-bloods, Article VIII. (Pet. App. — Ex. p. 6). Only if petitioners are successful in eliminating UDC do they encounter the membership question.

III

CONCLUSION

1. The complaint in the *AUC Case* fails to state a claim upon which relief can be granted.

2. The court lacks jurisdiction over the subject matter of the action in the *AUC Case*.

3. The UDC is the authorized representative to manage and distribute the mixed-blood interest in the net proceeds from reservation minerals.

4. Petitioners in the *Reyos Case* seek improper statutory construction to destroy the UDC, praying for preferential treatment as between Indians and reviving a moot question irrelevant to the case at bar.

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

DATED this 27th day of August 1971.

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APPENDIX

PLAN FOR DISTRIBUTION
of the
ASSETS OF THE INDIVIDUAL MIXED-BLOOD MEMBERS OF THE UTE INDIAN TRIBE, UINTAH AND OURAY RESERVATION, UTAH PURSUANT TO PUBLIC LAW 671 83rd CONGRESS-2nd SESSION (68 STAT. 868).

PART VII ONLY.

VII. Assets Not Susceptible to Equitable and Practicable Distribution.

Section 10 of the Act further provides, as follows:

> Sec. 10 . . . . All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

It is proposed that a corporation be formed under the laws of the State of Utah to receive all income belonging to the mixed-blood group from the theretofore unadjudicated or unliquidated claims against the United States, all income

from oil, gas and mineral rights of every kind and from all other assets not susceptible to equitable or practicable distribution. This corporation shall be organized not for purposes of profit, but shall be incorporated with a view of complying with the tax exemption provisions of State and Federal law with the major purpose of distributing to its stockholders the net revenues from such sources. Each person included upon the final mixed-blood roll as provided in Section 8 of the Act will be issued ten shares of stock in said corporation. The stock of the corporation will be subject to transfer, devise or descent. Officers of the corporation will be delegated authority from the stockholders for participation in the joint management of such assets from which the corporate income is derived, with the Tribal Business Committee of the full-blood group. The powers of the corporation shall be limited to distribution of said assets and the powers necessarily incident thereto.

Delegation of management powers by the original stockholders will provide a means of restricting the management to the interested parties. Thus, if a mixed-blood member disposes of his stock he will no longer have a voice in naming the mixed-blood delegates to act with the Business Committee of the full-blood Indians. Conversely, transferees, legatees and heirs will acquire a voice in such management as their interests are acquired.

UTAH CORPORATION STATUTE

Utah Code Annotated 18-2-3 (1943). Incorporators — Number and Residence — Name.

The number of incorporators shall be not less than five, one of whom must be a resident of this state. No corporation shall take the name of a corporation theretofore organized under the laws of this state, or of a foreign corporation that has complied with laws of this state so as to entitle it to do business within this state, nor one so nearly resembling the name of any such corporation as to be misleading. The secretary of state may refuse to issue a certificate of incorporation to any association violating the provisions of this section.

CERTIFICATE OF SERVICE

I, JOHN S. BOYDEN, a member of the Bar of this Court, hereby certify that on the 27th day of August 1971 I mailed a copy of the Brief Amici Curiae of the Ute Indian Tribe of Uintah and Ouray Reservation and Ute Distribution Corporation, a Utah Corporation, to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, air mail, postage prepaid, and a copy to each of the following attorneys, first class mail, postage prepaid:

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